

Flat Owners to Bear the Costs of Cladding Works Post-Grenfell

Background

The revelations from the Grenfell tragedy relating to substandard cladding has provoked management companies and freeholders up and down the country to undertake enhanced due diligence on the fire safety of their apartment blocks. The numbers of blocks affected is still an emerging picture but indications are that there are a number of developments in which the cladding requires rectification.

These cladding works have hit the headlines not only because of public concern but also because of the high cost of the planned works predicted. Current estimates for some works are above £30,000 per flat which has caused outrage among the flat owners. Some flat owners can also expect to be passed their share of a £4,000 a week cost for hiring fire wardens to patrol the block.

Housing associations and local authorities who are the landlords of relevant blocks have generally confirmed that they will not pass the cost of such works to the flat owners. There are a limited number of examples where private landlords have assumed responsibility for the costs. However, flat owners with private landlords and management companies are unlikely to be as lucky.

Mechanisms for recovery of cost of cladding work

Modern flat leases tend to include obligations on the landlord or management company to provide a number of services. The definition of services and exact requirements will vary from block to block but they will almost without exception include obligations to:

1 maintain the structure of the building; and,

2 insure the structure of the building as well as comply with the requirements and recommendations of the insurers.

The cost of carrying out the services will generally be passed down to the flat owners by means of a service charge.

As long as the service charge provisions of the flat leases are not defective, the flat owners have very little recourse available to them. The flat owners will be able to challenge the reasonableness of the costs but the likelihood of them being able to successfully argue that they are not responsible for the cost of the work is negligible if the cladding present at the block represents a risk to either life or property.

Practical effects



If the insurer of the block's structure requires work be carried out to cladding but the freeholder or management company fails to implement those works, the insurance policy could be vitiated. An uninsured block is, essentially, unmortgageable which could cause havoc for flat owners looking to sell their property.



The value of the flats could be drastically affected if notice of the freeholder or management company's intention to recover a large sum from each flat owner has been given. The situation will be compounded as the final cost of the works is likely to be uncertain.



Freeholders and management companies will encounter problems recovering the full cost of the works from the flat owners, a lot of whom, it appears, do not have the required funds to pay for the work up front. We will probably see a flurry of litigation on the subject but a contractual right to recover the service charge from the flat owner is only as useful as the owner's ability to pay. Freeholders and management companies may well have to plan their expenditure carefully, giving owners sufficient time to pay.



If time to pay, as mentioned above, does not produce the desired results, we may see management companies in particular (which tend to have no substantial assets) slipping into insolvency. The implications of that insolvency will vary from block to block but freeholders may find themselves lumbered with obligations they never expected to inherit.

The government has not yet indicated that there will be any assistance (financial or otherwise) available to rectify the situation. Unless the government steps in, the avenues available to flat owners are severely limited. Similarly, freeholders and management companies are likely to find their hands tied as they are obligated to carry out the necessary works to cladding whether the cost of those works is onerous or not.

Current assessments indicate that cladding related issues will be localised – affecting a limited number of blocks and, therefore, only a small proportion of flat owners across the UK. The issue is unlikely to cause volatility across the market place but that will be cold comfort to the flat owners who may find themselves in an untenable situation without the ability to cut their losses by selling up or freeholders and management companies who will find themselves facing staunch opposition to any indication that the cost of the work will be passed on to them.

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